IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1613 OF 2005

SHRI RAGHUNATH GOVIND BHOIR age 45 years, R/o : Village Choti Desai, Post: Padale, Tal & Dist : Thane (Now detained at Nasik Road, Central Prison at Nasik) ...Petitioner.

V/s

1. Shri D. Sivnandhan, Commissioner of Police, Thane.

2. The State of Maharashtra (Through Secretary Home Dept. (P.D.), Mantralaya, Mumbai.

3. The Superintendent, Nasik Road Central Prison, Nasik ...Respondents.

Mr. U.N. Tripathi for the petitioner.

Ms. A.S. Pai, APP for the respondents.

ALONG WITH

CRIMINAL WRIT PETITION NO. 1614 OF 2005

SHRI VISHNU MAYA BHOIR, Age 45 Years, R/o: Village Choti Desai, Post: Padale, Tal & Dist: thane, (Now detained at Nasik Road, Central Prison at Nasik) ...Petitioner.

V/s

1. Shri D. Sivnandhan, Commissioner of Police, Thane.

2. the State of Maharashtra (Through Secretary, Home Dept. (P.D.), Mantralaya, Mumbai.

3. The Superintendent, Nasik Road, Central Prison, Nasik. ....Respondents.

Mr. U.N. Tripathi for the Petitioner.

Ms. A.S. Pai, APP for the respondents.

CORAM: D.G. DESHPANDE & V.M. KANADE, JJ.

DATE : 5th December, 2005

ORAL JUDGMENT (Per V.M. Kanade, J.)

1. Since the facts and the question involved in both the Petitions are same, they are being disposed of by this common judgment.

2. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner is challenging the order of detention which is passed by the Commissioner of Police, Thane dated 22/3/2005 which is passed under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (Hereinafter referred to as the "MPDA Act").

3. The learned Counsel appearing on behalf of the petitioner has submitted that the Detaining Authority has not taken into consideration the fact that the Chemical Analyser’s report which was placed before him alongwith other papers which were submitted by the Investigating Authority clearly disclosed that the contents which were found in the alcohol which was seized from the petitioner were not injurious to the public health. It is submitted that the Detaining Authority has passed the order of detention on the ground that the activities of detenu are likely to adversely affect the public order and create terror in the locality, though both the grounds were available to the Detaining Authority as can be found in the Explanation to section 2(a). He submitted that this clearly indicated that the Detaining Authority had not applied its mind and had mechanically passed the said order and, on this ground alone, the said order of detention was liable to be set aside. He submitted that the Detaining Authority had relied on two CRs which were registered against the petitioner and, further, the reliance was placed on anonymous letter which was allegedly sent by a woman who was residing in the said locality. He submitted that the Detaining Authority has further relied on three in-camera

statements. He submitted that in none of these cases in the material which was placed before the Detaining Authority it was disclosed that the alcohol which was seized was either injurious to the health of the public at large or that the number of people died as a result of consumption of the said liquor which was seized from the detenu's godown. In support of the said submissions, he relied upon the judgment of the Supreme Court in the case of Rashidmiya @ Chhava Ahmedmiya Shaik vs. Police Commissioner, Ahmedabad and another reported in **AIR 1989 SC 1703** and other judgments of the Supreme Court. Though several other grounds are taken in the Petition, only the aforesaid contention was made by the Counsel for the petitioner.

4. The learned APP appearing on behalf of the State, on the other hand, invited our attention to the provisions of section 3(1) of the MPDA Act and also brought to our notice the explanation below section 2(a). She submitted that in view of this explanation, the Detaining Authority has the power and authority to detain the person not only on the ground of life of the people being affected but also on account of feeling of insecurity being created in the minds of the public at large. He submitted that, therefore, the submissions made by the learned Counsel appearing

on behalf of the petitioner cannot be accepted. She relied upon the Division Bench judgment of this Court in the case of Jyot @ Jude Wilson Patel vs. R.H. Mondenca, Commissioner of Police & Ors. reported in **1998(3) LJ 430** where the Division Bench of this court has, after taking into consideration the explanation to section 2(a) of the MPDA Act, has observed that in such cases merely non-filing of Chemical Analyser's report was not fatal to the order of detention.

5. We have given our anxious consideration to the submissions made by the learned Counsel appearing on behalf of the petitioner and the learned APP appearing on behalf of the State.

6. It would be relevant to consider the provisions of section 2(a) which reads as under:-

> "2. In this Act, unless the context otherwise requires.-
>
> (a) "acting in any manner prejudicial to the maintenance of public order means -
>
> (i) in the case of a slumlord, when he is

engaged, or is making preparations for engaging, in any of his activities as a slumlord, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(ii) in the case of a bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order:

(iii) in the case of a drug-offender, when he is engaged, or is making preparations for engaging, in any of his activities as a drug-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(iv) in the case of a dangerous person, when he is engaged or is making preparation for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.

> Explanation: For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof, or a grave or widespread danger to life or public health;"

From the aforesaid provisions, it is clear that the order of detention can be passed by the Detaining Authority if it finds (a) that feeling of insecurity is created in the minds of the people and (b) that the life of the public at large is put in danger and, therefore, on the plain reading of the said provision, it is clear that on either of the two contingencies the Detaining Authority can pass the order of detention. It would be relevant to consider the facts of the present case. From the grounds of detention dated 22/3/2005, it is evident that three in-camera statements have been recorded and the anonymous letter which is sent by the woman who is residing in the

locality also has been taken into consideration. The in-camera statements clearly reveal that as a result of the acts of the detenu and his hirelings, there was a feeling of insecurity which was created in the minds of the public at large. Apart from these three in-camera statements and the anonymous letter which is received, the Detaining Authority also has taken into consideration two CRs which are registered against the detenu i.e. C.R. No.III 252 of 2004 and C.R. No.III 266 of 2004 dated 28/2/2005 and 1/3/2005 respectively. The in-camera statements also have been recorded. The first statement was recorded on 28/2/2005 and the other two statements have been recorded on 1/3/2005. This clearly reveals that there is a close proximity of statements being recorded and the action being taken by the Detaining Authority.

7. So far as the judgment in the case of District Collector, Ananthapur and another vs. V. Laxmanna reported in **2005 CRI.L.J. 2150** on which the reliance is placed by the learned counsel appearing on behalf of the petitioner is concerned, in the said case, the High Court of Andhra Pradesh has set aside the order of detention which was passed against the respondents in the said case. Against the said order, a Special Leave Petition was filed by the Government. It was

contended by the counsel appearing on behalf of the appellants that the order of detention was passed on the ground that as a result of liquor which was being distributed by the respondents, the life of the public at large was put in danger since the said arrack was unfit for human consumption. In the said case, considering the said submission, the Apex Court observed that in order to arrive at a conclusion that as a result of consumption of the arrack the life of the public at large was likely to be in danger, it was necessary to rely on Chemical Analyser's report which also would indicate whether the arrack was unfit for human consumption. In our view, though there cannot be any doubt about the ratio which was laid down in the said judgment, however, the said ratio will not applicable to the facts of the present case. Firstly, from the judgment and order, it is evident that the order of detention appears to have been passed only on the ground that the sale of arrack by the respondents in the State was unfit for human consumption and on the basis of this material alone, the order of detention appears to have been passed. In the present case, however, the detention order has been passed also on the ground that the detenu, as a result of his activities, had affected the even tempo of the life of the people at large and, therefore, the public order

was affected as a result of his activities. The Apex Court while deciding the said case was not required to address itself on this ground of detention. Under the circumstances, the ratio laid down in the said judgment is not applicable to the facts of the present case.

8. The learned Counsel appearing on behalf of the petitioner has also relied upon the judgment of the Supreme Court in the case of Rashidmiya @ Chhava Ahmedmiya Shaik vs. Police Commissioner, Ahmedabad and another reported in **AIR 1989 SC 1703**. In the said case, the Supreme Court held that the order of detention of bootlegger under section 3 of the Act must be passed only if the Detaining Authority was satisfied that the said bootlegger was likely to adversely affect the maintenance of the public order. In our view, the ratio of the said judgment also will not apply to the facts of the present case. In the said case, the Supreme Court, after examining various cases which were registered against the appellant came to the conclusion that though the facts showed that he was a bootlegger within the meaning of section 2(b) of the said Act, it was not established from the various CRs which were registered against him that his activities were likely to adversely affect the

maintenance of the public order. The learned Counsel appearing on behalf of the petitioner also relied upon the Division Bench Judgment of this Court in Criminal Writ Petition No. 740 of 1998 decided on 23/12/1998 (Shri Augustine Diago Fernandes Vs. Mr. R.H. Mendonca and ors). In the said case also, the Division Bench of this Court held that the Detaining Authority has not taken into consideration the Chemical Analyser's report. After examining the contents of the Chemical Analyser's report, the Division Bench of this Court came to the conclusion that from the information which was given by the Chemical Analyser it was clear that the sample did not contain any adverse element which was hazardous to public health or public safety. In view of the Chemical Analyser's report, the Division Bench of this Court, in the said case, set aside the order of detention. In our view the ratio of the said judgment will not apply to the facts of the present case inasmuch as, in the present case, as stated hereinabove, the order of detention encompasses both the two grounds which have been mentioned in explanation to section 2(a) of the MPDA Act.

9. The learned APP, on the other hand, has relied upon the Division Bench Judgment of this Court in the

case of Smt. Gobibai Vs. Ghanvat Vs. State of Maharashtra & Ors. reported in **2003 ALL MR (Cri) 406**. In the said case also, the Chemical Analyser's report did not indicate that the liquor was not fit for human consumption. However, the Division Bench observed that the Detaining Authority had passed the order not only on account of the first ground but also on the other ground of feeling of insecurity which was created amongst the general public as a result of activities of the detenu as a bootlegger. In our view, the ratio of the said judgement clearly applies to the facts of the present case.

10. In the result, we do not accept the submissions made by the learned Counsel appearing on behalf of the petitioner. Both the above Writ Petitions are, therefore, dismissed. Rule in both the above Writ Petitions stands discharged. In the circumstances, there shall be no order as to costs.

(D.G.DESHPANDE, J.)

(V.M. KANADE, J.)